

JOHN R. DELANY.

[To accompany bill H. R. No. 430.]

MAY 25, 1842.

Mr. ARNOLD, from the Committee of Claims, submitted the following

REPORT:

The Committee of Claims, to whom was referred the memorial of John R. Delany, a citizen of Sullivan county, Tennessee, asking to have certain sums of money refunded which were collected of him by reason of a judgment which a certain John Cornett obtained in the circuit court of Hamilton county, in said State, against the said memorialist and others, for alleged trespasses upon the said Cornett, while discharging their duty as officers of the United States, in protecting the Cherokee Indians under the treaty of ———, and while acting under the special orders of Colonel William Lindsay, of the regular army of the United States, then commanding at Camp Poinsett, in the State of Tennessee, beg leave to report, as follows:

The memorialist states in substance that, in the year 1838, he was a major of the Tennessee volunteers, in the service of the United States, in the Cherokee nation, stationed at Camp Poinsett, Hamilton county, Tennessee, and whilst there an order was issued by Colonel William Lindsay, of the regular army of the United States, who then commanded the western division of the United States forces in the Cherokee nation, under the command of Major General Winfield Scott, to Lieutenant Colonel Joseph Powell, then in command of the Tennessee volunteers at Camp Poinsett, commanding said Powell to cause a certain John Cornett, a white man, residing in the Cherokee nation, to be arrested and put under guard for trespassing upon the property of two Indians, (viz: Goose-Water Lizard and Drowning Bear,) they being under the protection of the United States troops at Camp Poinsett; and, in obedience to said order, said Powell caused said Cornett to be arrested and kept under guard until he refunded certain sums of money coerced from said Indians, which he refused to do for several days, but at length, having complied with said order, was set at liberty. The petitioner further states that, after the liberation of said Cornett, although your petitioner had nothing to do in enforcing a compliance of said order, but because he was a major in command at said camp, he, together with said Powell, Captain Thomas J. Caldwell, and Lieutenant Reuben Roddy, were sued by said Cornett for a trespass, with force and arms, in the circuit court of Hamilton county, Tennessee, as will appear by a reference to a copy of the record of said suit, hereto annexed, (marked A;) and notwithstanding your petitioner

caused said suit to be defended by attorneys, a judgment was rendered against them, jointly, for \$350 and costs of suit, making in all, collecting fees and interest included, \$429 81, which your petitioner was alone compelled to pay, not having received any assistance from his co-defendants, and not being able to obtain any contribution from them under the law of Tennessee, which payment will appear by reference to the receipts of the sheriff and deputy sheriff of Sullivan county, hereto annexed, and marked B and C. Your petitioner furthermore represents that, in defending said suit, he was charged \$50 for attorneys' fees, as will appear by reference to the receipt of C. K. Gillispie, hereto annexed, and marked D. The petitioner further represents that he has made application to said Lieutenant Colonel Powell for the order referred to, and was informed by said Powell that said order was lost or so mislaid that he could not find it, but furnished two other orders, one before and the other after the order referred to, both having reference to Cornett's case, hereto annexed, and marked E and F.

This memorial is sworn to by the memorialist, and the statements of facts therein contained are fully sustained and corroborated by the record and other testimony in the cause. The committee therefore think that, according to the justice and equity of the case, as well as the invariable practice of this committee, said claim ought to be allowed, and have reported a bill accordingly.

A.

STATE OF TENNESSEE :

Pleas at the court-house, in the town of Dallas, county of Hamilton, and State aforesaid, on the fourth Monday, being the 25th day of March, in the year of our Lord one thousand eight hundred and thirty-nine, and in the sixty-third year of the independence of the United States. Present, the honorable Edward Scott, one of the judges of the circuit court of the State of Tennessee, and assigned, by interchange, to hold the courts of the third judicial district in said State.

STATE OF TENNESSEE :

To the sheriff of Hamilton county, greeting :

You are hereby commanded to summon Joseph Powell, John R. Delany, Thomas J. Caldwell, and Reuben Roddy, if to be found in your county, to appear before our circuit court to be holden, for the county of Hamilton, at the court-house in Dallas, on the first Monday after the fourth Monday in July next, to answer John Cornett, sen., of a plea of trespass, with force and arms, to his damage four thousand dollars. Herein fail not, and have you then there this writ.

Witness, Benjamin B. Cannon, clerk of our said court, at office in Dallas, the fourth Monday in March, 1838, and of American independence the sixty-second.

B. B. CANNON, *Clerk.*

Issued 19th of May, 1838, to July term; came to hand 23d May, 1838; executed in full 26th May, 1838, by me,

JOHN ROGERS, *Deputy Sheriff.*

Know all men by these presents that we, John Cornett, sen., and John Cornett, jun., are jointly and severally held and firmly bound unto Joseph Powell, John R. Delany, Thomas J. Caldwell, and Reuben Roddy, in the penal sum of two hundred and fifty dollars, to be void on condition that the said John Cornett, sen., will with effect prosecute a suit by action of trespass, with force and arms, which he this day commenced against the said Joseph Powell, John R. Delany, Thomas J. Caldwell, and Reuben Roddy, in the circuit court for Hamilton county, or, in case of failure of such prosecution, pay and satisfy all costs and damages as may be awarded against him by our said court.

Witness our hands and seals this 19th day of May, 1838.

JOHN CORNETT, SEN., [L. S.]

JOHN CORNETT, JUN., [L. S.]

By his attorney in fact, JOHN CORNETT, Sen.

Test: B. B. CANNON.

STATE OF TENNESSEE, }
Hamilton county. } Circuit Court, July term, 1838.

John Cornett, sen., by his attorney, complains of Joseph Powell, John R. Delany, Thomas J. Caldwell, and Reuben Roddy, who have been summoned by the sheriff to answer John Cornett, sen., of a plea of trespass, with force and arms, to his damage \$4,000, for this that heretofore, on the fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, in the county of Hamilton, in the State of Tennessee, the said Joseph Powell, John R. Delany, Thomas J. Caldwell, and Reuben Roddy, with force and arms, made an assault upon the said John Cornett, sen., in the county and State aforesaid, and then and there seized and laid hold of him, the said John Cornett, sen., and, with great force and violence, pulled and dragged about him, the said John Cornett, sen., and then and there forced and compelled him, the said plaintiff, to go along roads and streets under guard, and exposed to ridicule and contempt, to a certain place called a guard-house, in the county and State aforesaid, and then and there imprisoned the said plaintiff, and kept and detained him in prison, without any reasonable or probable cause whatsoever, for a long space of time, to wit: for the space of eleven days and nights then next following, contrary to the laws of the land, and against the will of the said plaintiff; whereby he, the said John Cornett, sen., was then and there not only greatly hurt, bruised, and wounded, but was also thereby then and there greatly exposed and injured in his credit and circumstances, to wit: at the time aforesaid, in the county and State aforesaid.

And also for that the said defendants, on the day and year aforesaid in the county and State aforesaid, with force and arms, another assault upon the said John Cornett, sen., did make, and then and there beat, bruised, and ill-treated him, the said plaintiff, and kept and detained him in prison, then and there, without any reasonable or probable cause whatsoever, for a long space of time, to wit: for the space of eleven days then next following, contrary to the laws of the land, and against the will of the said plaintiff; whereby the said plaintiff was prevented from attending to his ordinary business, and was denied all intercourse with his friends, and restrained of his liberty, and other wrongs and injuries to the said plaintiff, then and there did to the great damage of the said plaintiff, and

against the peace and dignity of the State : wherefore the said plaintiff saith that he is injured, and hath sustained damage to the amount of four thousand dollars ; and therefore he sues, and has pledges to prosecute, &c.

JARNAGIN & BRADFORD,

Attorneys for Plaintiff.

And the defendants, by their attorney, come into court, and defend the force and injury, when, where, &c., and for plea say the plaintiff, his action aforesaid against them, ought not to have and maintain, because they say they are not guilty of the trespasses in the plaintiff's declaration mentioned in manner and form as therein complained against them ; and of this they put themselves upon the country.

CAMPBELL & VAN DYKE,

Attorneys for Defendants.

And the plaintiff doth the like.

JARNAGIN & BRADFORD,

Attorneys for Plaintiff.

All civil causes not otherwise disposed of are continued till next term of the court.

The parties, by their attorneys, appear ; and also come a jury of good and lawful men, to wit : Peter Parkison, James Roark, Samuel White, William M. Davis, William Rogers, jun., Elijah Thurman, Alexander Freeman, Jesse Walker, Charles S. Grigsby, John Taliaferro, Michael P. Light, and Dennis Condry, who, being elected, tried, and sworn, well and truly to try the issue joined, upon their oath say they cannot agree, and, by consent, are respited from rendering their verdict until to-morrow morning, under the charge of the court.

The parties, by their attorneys, appear, and the jury, who were respited on yesterday evening from rendering their verdict until this morning, come, and, upon their oath, do say that the defendants are guilty of the trespass, with force and arms, in the declaration mentioned, in manner and form as the plaintiff, in declaring, hath alleged ; and they assess the plaintiff's damages, by reason of the premises, to three hundred and fifty dollars. Therefore it is considered by the court that the plaintiff recover of the defendants the sum of three hundred and fifty dollars, the damages so, as aforesaid, assessed by the jury, and his costs about his suit in this behalf expended, and that he have his execution.

STATE OF TENNESSEE :

To the sheriff of Sullivan county, greeting :

You are hereby commanded, as the sheriff of Munroe county has oftentimes been, that, of the goods and chattles, lands and tenements, of Joseph Powell, John R. Delany, Thomas J. Caldwell, and Reuben Roddy, in your county, you cause to be made the sum of three hundred and eighty-two dollars eighty-two and a half cents, which John Cornett, sen., lately, in our circuit court for the county of Hamilton, recovered against them for damages and costs, whereof the said Joseph, John R., Thomas J., and Reuben, are convicted and liable, as appears of record ; and have you the said money ready to render before our said court, at a court to be held

for the county of Hamilton aforesaid, at the court-house in Dallas, on the fourth Monday in March next, and have you then there this writ.

Witness, Benjamin B. Cannon, clerk of our said court, at office in Dallas, the fourth Monday of November, 1839.

B. B. CANNON, *Clerk.*

State tax (original suit)	-	-	-	-	\$2 25
Clerk heading process, 75 cts.; prosecution bond, 50 cts.; taking one security, 20 cts.; entering security bond, 20 cts.; subpoenas for seven witnesses, 87½ cts.; one continuance, 37½ cts.; empannelling jury, 12½ cts.; order respecting jury, 25 cts.; judgment final, 75 cts.; examination of record out of court, 12½ cts.; making out copy of costs, 25 cts.; entering judgment and bill of costs, 25 cts.; recording process and proceedings, \$1 62½	-	-	-	-	6 27½
D. S. Rogers, summoning 4 defendants at 100 cts., \$4 00; summoning jury 12½ cts., and 4 witnesses at 25 cts., \$1 12½	-	-	-	-	5 12½
Witness, Gilbert W. Dearing: 1 day, at 75 cts.; 22 miles travel, at 4 cts.	-	-	-	-	1 63
Witness, Henry Cornett: 5 days, at 75 cts.; 44 miles travel, at 4 cts.; and 4 ferriages, at 12½ cts. each	-	-	-	-	6 01
Witness, Absolom Seively: 5 days, at 75 cts.; 44 miles travel, at 4 cts.; and 4 ferriages, at 12½ cts. each	-	-	-	-	6 01
Witness, Thomas R. Holland: 1 day, at 75 cts.; 30 miles, at 4 cts.; 2 ferriages, at 12½ cts. each	-	-	-	-	2 20
Witness, Thomas C. Moore: 1 day, at 75 cts.; 30 miles, at 4 cts.; 2 ferriages, at 12½ cts. each	-	-	-	-	2 20
Judgment, 26th March, 1839: damages	-	-	-	-	-350 00
					<hr/> \$381 70
Clerk: fi. fa., 37½ cts.; alias, 37½ cts.; pluries, 37½ cts.	-	-	-	-	1 12½
					<hr/> \$382 82½ <hr/>

Issued 3d December, 1839; received 1st February, 1840; 12th February, 1840, levied this fi. fa. on one wagon and five head of horse beasts, as the property of John R. Delany; advertised the same to be sold at the house of the said Delany, on the 4th day of March, 1840; took bond and security for the delivery of the same; attended on the 4th day of March, at the said Delany's; the property delivered, and no sale for the want of bidders.

AMOS JAMES, *Sheriff.*

Cr. this fi. fa. one hundred dollars, Tennessee money, paid by John R. Delany, 4th March, 1840.

A. JAMES, *Sheriff.*

On the 15th day of December, 1840, a pluries writ of venditioni expenas issued, on which the following return has been made, to wit:

"Received 2d January, 1841: Received, in Tennessee bank notes, \$200, the 20th February, 1841; received, in Tennessee bank notes,

\$68 32½; and \$20 in Athens Railroad (Georgia) bank notes, the 1st March, 1841: makes, in all, \$288 32½.

"John R. Delany, one of the defendants, produced a receipt from A. James, former sheriff, dated March, 1840, for \$100, purporting to have been paid on this judgment, after deducting for commission and levy; balance \$95: making \$382 32½

"J. B. HAMILTON, *Sheriff.*"

On the 29th April, 1841, an alias pluries writ of venditioni exponas issued, on which the following return has been made, to wit:

"Received the 24th July, 1841; and received \$31 20 October 16, 1841, which is the amount of this writ, all but my costs, and returned to the post office the 2d November, 1841.

"J. B. HAMILTON,
" *Sheriff of Sullivan County.*"

STATE OF TENNESSEE, *Hamilton county*:

I, Benjamin B. Cannon, clerk of the circuit court for the county of Hamilton, in the State of Tennessee, do certify the foregoing to be a true and perfect transcript of the record in the cause between John Cornett, sen., plaintiff, and Joseph Powell, John R. Delany, Thomas J. Caldwell, and Reuben Roddy, defendants, together with the pluries, execution, and return on it, and the returns on such orders of sale only, as the sheriff received or made money upon; it not appearing that any money was made on those writs of execution and orders of sale, the returns on which are omitted in this transcript.

In testimony whereof, I have hereunto set my hand and private seal [L. s.] (not having an official) at office in Harrison, the 10th day of January, 1842.

B. B. CANNON, *Clerk.*

I certify that Benjamin B. Cannon, at the date of the foregoing certificate, was clerk of the circuit court of Hamilton county, in the State of Tennessee, and that his official signature is entitled to due faith and credit.

Given at Washington city, March 3, 1842.

THOMAS J. CAMPBELL,
House of Representatives.

B.

Received of John R. Delany three hundred and ninety-eight dollars and fifty cents in full of a judgment and cost John Cornett recovered against John R. Delany, T. J. Caldwell, Reuben Roddy, and Joseph Powell, in the circuit court of Hamilton county, Tennessee, March 1, 1841.

J. B. HAMILTON,
Sheriff of Sullivan county, Tennessee.

C.

Received of John R. Delany thirty-one dollars and thirty-one cents, in full of the interest and cost of a judgment John Cornett recovered against said Delany, Joseph Powell, Reuben Roddy, and Thos. J. Caldwell, in the circuit court of Hamilton county, Tennessee, this 14th October, 1841.

M. MASSINGILL,
Deputy Sheriff of Sullivan county, Tenn.

D.

DECEMBER 1, 1840.

Received of John R. Delany fifty dollars for my services as an attorney at law, wherein John Cornett was complainant and John R. Delany *et al.* were defendants.

C. K. GILLISPIE,
Cleveland, Tenn.

E.

HEADQUARTERS ARMY C. N.,
Fort Cass, April 17, 1838.

SIR: The colonel commanding desires me to inform you that you must protect the Indian, Goose-Water Lizard, against the warrant issued at the instigation of John Cornett, and say to the latter that if he persists in his course he will be put out of the nation. If necessary, you will cause this threat to be executed.

Very respectfully, your obedient servant,

J. MACKAY,
Acting Adjutant General.

Lt. Col. POWELL.

F.

HEADQUARTERS ARMY C. N.,
Fort Cass, May 12, 1838.

SIR: Colonel Lindsay directs that the man Cornett be released on paying Drowning Bear seven dollars, and Goose-Water Lizard twelve dollars and fifty cents. You will have him put out of the nation, and, if possible, kept out, at any rate, till after the 23d instant.

I am, very respectfully, your obedient servant,

J. MACKAY,
Acting Adjutant General.

Lt. Col. POWELL.

WASHINGTON, *April 27, 1842.*

Some time in the year 1838 a suit was instituted in the circuit court of Hamilton county, Tennessee, by John Cornett against Joseph Powell, John R. Delany, Thomas J. Caldwell, and Reuben Roddy, for an alleged trespass committed by the defendants, whilst in the service of the United States, upon the plaintiff.

The undersigned was present at the trial of the cause, and acted as attorney for the defendants, and is acquainted with the parties.

It appeared, from the evidence, that the defendants did commit a trespass upon the plaintiff whilst acting as volunteer militia in the service of the United States, in the execution of an order to carry into effect the treaty between the United States and the Cherokee Indians for their removal west. General Delany, as appeared from the evidence, was not present at the commission of the trespass, but he was connected with it sufficiently to justify a verdict against him; still, the whole transaction grew out of an order made under the treaty aforesaid, and to protect the Cherokee Indians under the stipulations of that treaty, and for the energetic and faithful performance of which the defendants were answerable to the Government of the United States. General Delany has promptly paid a fee of fifty dollars to his counsel, and, from the condition of his co-defendants, will have to pay, if he has not already done so, the amount of the judgment recovered by Cornett in the suit aforesaid, the extent of which can be seen upon reference to the record in the cause. This case, like some others, grew out of a conflict between the General and State Governments, under the treaty already referred to. General Delany was a good officer, and of mild and forbearing deportment, but firm in the execution of orders received by him.

THOS. J. CAMPBELL.

I have inspected the receipts, B, C, and D, filed in this case by John R. Delany, and have no doubt they are genuine. I have no doubt he has paid the money, as specified in those receipts. I also state that I am well acquainted with the petitioner, and know that he is a mild and gentlemanly man. I have also examined the affidavit of Lieut. Col. Powell, filed in this cause, and dated on the 22d of March last, and sworn to before the honorable Robert M. Anderson. I have no doubt the signature of the affidavit is genuine, and also that of the honorable judge before whom he deposed.

Given under my hand at the capital of the United States this 23d day of May, A. D. 1842.

A. McCLELLAN.